IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 699 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RAJENDRASINH RAIJIBHAI SOLANKI

Appearance:
MR.B.D. DESAI, A.P.P. for Petitioner
MR P.J. BHATT for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 10/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The acquittal of the respondent of the offences punishable under Sections 5 (1) (d) and 5 (2) of the Prevention of Corruption Act, recorded by the learned Special Judge, Vadodara in special case No.1/86 vide judgement dated April 24, 1988 is subject matter of challenge in the present appeal, which is filed under Section 378 of the Code of Criminal Procedure.

2. The respondent was at the relevant time working as Deputy Mamlatdar (Supply) at Padra. Complainant Mr.A.M.Patel, had started a sole proprietory business in the name and style of "Viral Agency" at Padra. The complainant had approached the respondent for obtaining licences as the complainant was desirous of dealing in hydrogenated vegetable oil on retail as well as wholesale basis. According to the complainant the accused had demanded an illegal gratification of Rs.200/- for issuance of the licences. As per prosecution, though licences were issued to the complainant, the complainant had not paid the amount of illegal gratification demanded by the respondent and therefore, the respondent had issued a notice calling upon him to show cause as to why the licences should not be cancelled. The prosecution claims that on receipt of notice on April 27, 1985, the complainant had approached the respondent at his residential house at about 10.00 a.m. where the respondent had again demanded illegal gratification of Rs.200/- from the complainant. According to the prosecution, the complainant was not willing to pay the amount of bribe to the respondent and had met the A.C.B. officials at Baroda and lodged the complaint on April 28, 1985. Thereafter, the complainant was directed by the Inspector of A.C.B. to approach him again during the evening hours and, therefore, at about 5.30 p.m. the complainant had gone back to the A.C.B. office with currency notes of Rs.200/- and two panchas were called. The prosecution has averred that the currency notes were smeared with anthracene powder and were inserted in left chest bush-shirt pocket of the complainant and the first part of the panchnama was completed. Thereafter, according to the prosecution, the complainant, the panchas and the members of the raiding party had gone to Padra, and the complainant as well as Panch No.1 had approached the house of the accused, but the accused was not present, and therefore, the members of the raiding party had returned and gone again to the house of the respondent at about 9.45 p.m. The case of the prosecution is that complainant had knocked the doors of the house of the respondent and after opening the same

the respondent had some talk with the complainant and the complainant had paid the amount of Rs.200/- to the respondent as illegal gratification for the issuance of two licences as well as for dropping the show cause notice. The prosecution has claimed that necessary signal was given by Panch No.1 and raid was carried out and mudammal currency notes were recovered from beneath the clipboard which was lying on the table of the accused. The currency notes recovered were attached and the second part of the panchnama was completed. The case was investigated by P.I. Mr.Swami, who at the conclusion of the investigation, chargesheeted the respondent of the offences punishable under Sections 5 (1) (d) and 5 (2) of the Prevention of Corruption Act. The charge under Sections 5 (1) (d) and 5 (2) of the Prevention of Corruption Act, was framed by the learned Special Judge against the respondent. The charge was read over and explained to the respondent, who pleaded not guilty to the same and claimed to be tried. Therefore, the prosecution examined ; (1) Ashokbhai Mangalbhai as P.W.1 at Exh.13, (2) Hasmukhbhai S. Shah as P.W.2 at Exh.26, (3) Chimanbhai B. Patel as P.W.3 at Exh.29, (4) Somabhai L. Vasava as P.W.4 at Exh.33 and (5) Rambharti K. Swami as P.W.5 at Exh.34 and also produced documentary evidence, such as complaint lodged by Ashokbhai, sanction to prosecute the respondent, panchnama etc., to prove its case against the respondent. After recording of evidence of prosecution witnesses was over, the learned Judge recorded further statement of the respondent under Section 313 of the Code of Criminal Procedure. In his statement the respondent denied the case of the prosecution, but did not examine any witnesses in support of his defence. However, he filed written statement at Exh.35.

3. On appreciation of evidence adduced by the prosecution, the learned Special Judge held that the case of the prosecution that notice at Exh.14 was issued by or at the instance of the respondent to pressurize the complainant to part with bribe money was not proved. The learned Judge deduced that the prosecution was not able to establish that the complainant had seen the respondent at his quarters on April 27, 1984 at about 10.00 a.m. during which the alleged demand of illegal gratification was made as alleged. According to the learned Judge, the prosecution evidence proved beyond reasonable doubt that on April 28, 1984 the accused was not present and therefore, the case that on that day second time demand for illegal gratification was repeated was not proved. The learned Judge further held that the so called signal was given by Panch No.1 after 30 minutes of the entry of

the complainant in the residential quarters of the respondent though admittedly, the talk which had transpired, could not have lasted for more than 3 minutes and therefore, the prosecution case was doubtful. The learned Judge further reasoned that the prosecution evidence itself established that there was a blackout during the evening hours and at night in the town including the compound and the quarter of the respondent which made the experiment of lamp and powder and the writing of the second part of the panchnama impossible. The learned Judge also held that Panch No.1 was a person of weak moral fibre, on whose evidence explicit faith and reliance could not be placed and case against the respondent was not proved by the prosecution beyond reasonable doubt. In view of the above referred to conclusions, the learned Judge had acquitted the respondent by judgment dated April 26, 1988 giving rise to the present appeal.

4. Mr.B.D. Desai, learned A.P.P. after taking us through the entire evidence on record submitted that the case of demand of illegal gratification by the respondent is amply proved by the reliable testimony of the complainant which is corroborated in material particulars by his complaint and therefore the respondent ought to have been convicted for demanding illegal gratification from the complainant. What was stressed was that the evidence of complainant regarding demand and acceptance of bribe money is corroborated not only by the testimony of the panch witness, but also by the sworn testimony of Police Inspector and therefore, the appeal should be accepted.

5. Heard, the learned counsel for the parties. We have taken into consideration the arguments advanced by the learned counsel for the State Government and taken into consideration the evidence on record. The case of prosecution is that for issuance of licences the respondent had demanded illegal gratification and as the complainant had failed to pay bribe amount, after issuance of licences to him, the respondent had issued notice Exh.14 to pressurize the complainant to pay bribe amount. However, we find that the licences were not issued by the respondent who was then holding the post of Deputy Mamlatdar, but were issued by Mamlatdar. Further the notice Exh.14, dated April 23, 1985 was also not issued by respondent, but the evidence of witness Chimanbhai Patel, who was then Mamlatdar, indicates that it was issued by him without verifying the facts. The evidence of clerk Mr.Vasava Exh.33 would indicate that he had prepared the notice Exh.14 and his say that Exh.14

was prepared under the orders or directions of the respondent stands falsified by the evidence of Mamlatdar Shri Patel, who has clearly stated that the notice was placed before him in routine manner and not by Deputy Mamlatdar. The finding recorded by the learned Special Judge that the respondent had nothing to do with notice Exh.14 is therefore eminently just and it is not proved by the prosecution that the respondent had issued notice to the complainant with a view to pressurizing him to pay bribe amount. Further, the complainant had claimed that he had seen the respondent at his residence on April 27, 1985 at about 9.00 a.m., but the evidence of Mamlatdar Mr.Patel indicates that April 27, 1985, was a non-working Saturday and on previous day, the respondent had submitted a report seeking permission to leave headquarters on April 27, 1985, as he had to attend a social occasion at his home town. Thus, the say of the complainant that he had seen the respondent on April 27, 1985 becomes highly doubtful. Further, the case of the prosecution is that because of receipt of notice Exh.14, on April 27, 1985, the complainant had seen the respondent at his quarter on that day. However, the complainant has categorically stated in his evidence that notice Exh.14 was received by him on April 28, 1985 and not on April 27, 1985. This destroys the so called purpose for which the complainant had to see the respondent. If the notice Exh.14 was received by the complainant on April 28, 1985, there was no reason for the complainant to go to the residence of the respondent on April 27, 1985 and see him on that day. Thus meeting of the complainant with respondent on April 27, 1985, at the residence of the respondent is highly doubtful and therefore, case of the demand of illegal gratification by the respondent on that day cannot be believed.

6. So far as demand and acceptance of the bribe money on the date of incident is concerned, the complainant has clearly stated that he himself had initiated talk and the respondent had not demanded any amount. What is claimed by the complainant is that when he had offered the amount of Rs.200/- to the respondent, the reaction of the respondent was that there was no sense in taking the amount after a lapse of 5-6 months. The above evidence tendered by the complainant would indicate that the respondent had not demanded any illegal gratification. The learned Judge who had opportunity of observing the demeanour of the witnesses has, after going through the evidence of Panch No.1, rightly concluded that Panch No.1 was a person of weak moral fibre on whose evidence explicit faith and reliance could not be placed. As far as find of anthracene powder and experiment of

lamp is concerned, the evidence of prosecution witness Sombhai Vasava would indicate that the lights had gone off from 7.00 p.m. because of the call given for total blackout due to Anti-Reservation Agitation which was then going on in the State. The complainant has in his evidence clearly stated that he was not in a position to say categorically that the lights were burning. On the contrary he maintained before the Court that he had no idea as to whether the lights were on or not at the first occasion as well as on the second occasion. Thus, the claim regarding find of anthracene powder made by the prosecution is highly doubtful. Moreover, the prosecution has not explained as to why, the complainant was with the accused for a period of 30 minutes. The talk regarding illegal gratification could not have lasted for more than 2-3 minutes. The signal given by Panch No.1 after 30 minutes of the entry of the complainant in the residential quarter of the respondent compels us to draw adverse inference against the prosecution. The complainant and panch witnesses were offered water by the respondent at his residence, but they could not state as to who had given glasses of water to them. In view of this position, it is probable that the respondent himself must have have gone inside the kitchen for bringing glasses of water and during that time the currency notes were inserted beneath the clipboard. On overall view of the matter we are satisfied that the learned Judge has given convincing reasons for acquitting the respondent. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case pointed out by the learned Judge go to the root of the matter and strike a vital blow on the prosecution case. In such a case it would be safe to set aside the order of acquittal more particularly, when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of witnesses. As we are in general agreement with the view expressed by the learned Judge. We do not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decision rendered by the Supreme Court in the case (1) Girija Nandini Devi & Ors. v. Bijendra Narain Chaudhary, A.I.R. 1967, S.C. 1124, and (2) State of Karnataka v. Hema Reddy and anothers, A.I.R. 1981 S.C.1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the

respondent. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodged the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

For the foregoing reasons the appeal fails and is dismissed. Mudammal articles to be disposed of in terms of directions given by the learned Judge in the impugned judgement.

(J.M. Panchal, J).

(S.D. Dave, J).

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